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9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA  
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12 TEDDY LEROY WILSON, Jr., CDCR ) Case No. 06cv2420-WQH (BLM)  
13 #78443, )  
14 Plaintiff, ) **ORDER DENYING THIRD MOTION**  
15 v. ) **REQUESTING ASSISTANCE OF**  
16 ISMAEL BRIZYELA, et al., ) **COUNSEL**  
17 Defendants. ) **[Doc. No. 37]**

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18 On September 25, 2007, Plaintiff filed his third request for  
19 assistance of counsel. The district judge denied his first request on  
20 July 10, 2007, finding that Plaintiff had failed to demonstrate the  
21 requisite "exceptional circumstances" to justify appointment of counsel.  
22 Doc. No. 22. This Court denied his second request on the same grounds  
23 on August 9, 2007. Doc. No. 33. Specifically, this Court concluded  
24 that Plaintiff had failed to demonstrate that he had been denied access  
25 to legal materials, as he claimed, and therefore determined that  
26 Plaintiff had not alleged the requisite "exceptional circumstances."

27 Id.

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1 In the instant request, Plaintiff once again contends that he has  
2 been denied access to legal materials. Doc. No. 37. He presents  
3 evidence showing that the prison library has been closed for months and  
4 explains that the prison library did not reopen until the day before he  
5 was released from custody. Id. The residential treatment facility at  
6 which he now resides does not have a library and he is not allowed to  
7 leave the facility. Id. Plaintiff submitted a letter from the  
8 executive director of the facility, which confirms that Plaintiff  
9 entered the program on September 19, 2007, and will not be allowed to  
10 leave the facility for personal reasons (such as to go to a law library)  
11 for the first sixty days. Id.

12 As explained in the district judge's order and this Court's prior  
13 order, "[t]here is no constitutional right to appointed counsel in a §  
14 1983 action." Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997)  
15 (citing Storseth v. Spellman, 654 F.2d 1349, 1353 (9th Cir. 1981)); see  
16 also Hedqes v. Resolution Trust Corp. (In re Hedqes), 32 F.3d 1360, 1363  
17 (9th Cir. 1994) ("there is no absolute right to counsel in civil  
18 proceedings"). Thus, federal courts do not have the authority "to make  
19 coercive appointments of counsel." Mallard v. United States District  
20 Court, 490 U.S. 296, 310 (1989); see also United States v. \$292,888.04  
21 in U.S. Currency, 54 F.3d 564, 569 (9th Cir. 1995) ("Appointment of  
22 counsel under [28 U.S.C. § 1915] is discretionary, not mandatory").

23 District courts have discretion, however, pursuant to 28 U.S.C. §  
24 1915(e)(1), to "request" that an attorney represent indigent civil  
25 litigants upon a showing of "exceptional circumstances." Agyeman v.  
26 Corrections Corp. of America, 390 F.3d 1101, 1103 (9th Cir. 2004). "A  
27 finding of the exceptional circumstances of the plaintiff seeking  
28 assistance requires at least an evaluation of the likelihood of the

1 plaintiff's success on the merits and an evaluation of the plaintiff's  
2 ability to articulate his claims 'in light of the complexity of the  
3 legal issues involved.'" Id. at 1103 (quoting Wilborn v. Escalderon,  
4 789 F.2d 1328, 1331 (9th Cir. 1986)).

5 Plaintiff has not argued that he is unable to articulate his  
6 claims, other than to the extent he claims he has been deprived of  
7 access to legal materials, and the Court's review of Plaintiff's filings  
8 confirms that he is able to articulate his claims. Moreover, to  
9 alleviate the access issue, this Court has, by separate order, granted  
10 Plaintiff an extension of time in which to file his opposition so that  
11 he may utilize a law library after the conclusion of the initial sixty  
12 day period of confinement at the residential treatment facility. Thus,  
13 the Court finds that Plaintiff has failed to allege the requisite  
14 "exceptional circumstances." Accordingly, the Court hereby **DENIES**  
15 Plaintiff's Motion Requesting Assistance of Counsel [Doc. No. 37].

16 **IT IS SO ORDERED.**

17  
18 DATED: October 3, 2007

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20 BARBARA L. MAJOR  
21 United States Magistrate Judge

22 COPY TO:

23 HONORABLE WILLIAM Q. HAYES  
24 U.S. DISTRICT JUDGE

25 ALL COUNSEL  
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